

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

to

FIRST APPEAL No. 5144 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE H.R.SHELAT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : Yes.

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

2. To be referred to the Reporter or not? : Yes. ed  
to the Reporter or not? : Yes. ed to the Reporter or not? : Ye  
. ed to the Reporter or not? : Yes. ed to the  
eporter or not? : Yes. ed to the Reporter or not? : Yes.  
ed to the Reporter or not? : Yes. ed to the Reporter  
or not? : Yes. ed to the Reporter or not? : Yes.  
ed to the Reporter or not? : Yes. ed to the Reporter or not?  
: Yes. ed to the Reporter or not? : Yes. ed to  
the Reporter or not? : Yes. ed to the Reporter or not? : Yes.  
ed to the Reporter or not? : Yes. ed to the Rep  
rter or not? : Yes. ed to the Reporter or not? : Yes.  
ed to the Reporter or not? : Yes. ed to the Reporter or  
not? : Yes. ed to the Reporter or not? : Yes.  
d to the Reporter or no

3. Whether Their Lordships wish to see the fair copy of the judgement? : No.

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 4 & 5: No.

DY COLLECTOR &amp; SPECIAL LAND ACQUISITION OFFICER

Versus

VECHATBHAI VIRSINGBHAI BARIA & Others.

-----

Appearance:

Mr. Mukesh Patel, A.G.P. for appellants

MR KM SHETH for Respondent.

-----

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE H.R.SHELAT

Date of decision: 15/07/97

ORAL JUDGEMENT (Per: J.N.Bhatt, J.)

Admit. Service of notice is waived by Mr. K.M.

Sheth, learned advocate for the respondents.

2. Upon joint request and considering the facts and circumstances, this batch of three appeals under Section 54 of the Land Acquisition Act, (Act) is taken up for final hearing today. The copies of the original record are also supplied in two sets before us by the learned advocates appearing for the parties.

3. After having heard the learned Assistant Government Pleader, Mr. Mukesh Patel for the appellants and learned advocate, Mr. K.M. Sheth for the respondents and after having given anxious thoughts and dispassionate examination of the record, we are satisfied that the impugned common award of Extra-Assistant Judge, Panchmahals, Godhra in Land Reference Cases, is justified and requires no interference of this court in this batch of appeals.

4. The Reference Court has placed reliance on the earlier award which has become final in view of the decision of this Court in First Appeal No. 2490 of 1994 to 2498 of 1994 decided by the Division Bench consisting of Chief Justice B.N. Kirpal (as he then was) and brother Justice A.N. Divecha, on 16th January 1995.

5. In the aforesaid Division Bench of this Court, the award of the trial court granting an amount of Rs. 5.82 per sq. meter towards assessment of market value made by the Reference Court was accepted. The award which was relied on in the said case was considered relevant and comparable one.

6. The appellants herein have questioned the legality and validity of the common judgment and award dated 31st July 1995 recorded by Extra Assistant Judge, Panchmahals at Godhra. The Reference Court placed

reliance on the aforesaid decision of the Division Bench and also on the Division Bench decision of this Court in Officer-on-Special Duty, Land Acquisition Officer, G.I.D.C., Ahmedabad. vs. Jhamkuben Kalidas Sondha and others - 1992 (1) G.L.H. Page 417, wherein it was held that for determining the compensation for the acquisition of the land and the market value, the award in another case could form the basis. No doubt, there are several recognized modes for basing the award or arriving at a fair and just amount of compensation. An award relevant and comparable is one of the modes for making proper and just assessment of market value. The Reference Court has exactly done the same thing. The award which has become final, which is relevant and which is comparable, is relied on. The approach adopted by the Reference Court is justified.

7. We would also like to state that in the aforesaid Division Bench decision, in First Appeal No. 2490 of 1994 the reliance was also placed on the award passed in Land Reference Case No. 25 of 1988. Appeals were filed against the award and the same were dismissed by this Court on 7th February, 1994. In that case, Notification under Section 4 sub-section (1) of the Act was published on 13-10-1983, whereas in the present case it came to be published on 15-10-1989. The reliance on the earlier awards wherein the assessment of market value was made at the rate of Rs. 5.82 per sq.meter is adopted by the Reference Court in a composite judgment and award which is directly under challenge before us. We, therefore, find no substance and merits in this batch of three appeals.

8. Incidentally, it may also be stated that the present group of appeals is also covered by the award approved by this court in First Appeals No. 4001 to 4012 of 1995 on 12-12-1995 and also in First Appeal No. 217 of 1994 recorded on February 7, 1994.

9. In view of the aforesaid situational reality and facts and circumstances emerging from the record of this group of appeals, and on perusing the earlier awards which are comparable and similar and which have been followed by the Reference Court in a composite impugned judgment and award, we find no reason to interfere with the same. We, therefore, fully concur with the reasons assigned and recorded by the Reference Court in a common judgment and award.

10. Consequently, we have no hesitation in dismissing all the three appeals at this stage. Accordingly, all

the three appeals are dismissed. However, our attention is drawn to the fact that the Reference Court has passed a direction to deduct 5% of the amount in case of new Tenure Lands in view of the Circular of the Government dated April 26, 1972. The said Circular is held to be ultra vires by the Apex Court in State of Maharashtra vs. Babu Govind Gavate - AIR 1996 S.C. 904. It was clearly laid down in the said decision by the Hon'ble Apex Court that the deduction would be permissible under Section 43 of the Bombay Tenancy and Agricultural Lands Act only in case of bilateral agreement and not in case of compulsory acquisition like one on hand. It is true that the respondents have not filed appeals or cross-objections. However, that would not inhibit or create any impediment in doing real justice in the matter in view of the provisions of Order XLI Rule 33 of the Code of Civil Procedure, 1908 (Code). In a situation like one on hand, the court is empowered to modulate the order, decree or any decision under challenge in the appeal even if the respondent has not filed cross-appeal or has not raised cross-objections. The powers enshrined in Rule 33 of Order XLI of the Code could be exercised by this court also notwithstanding that the appeal is as to part only of the decree and could be exercised in favour of all or any of the respondents or parties, although such respondents or parties, may not have filed any appeal or objection. Therefore, in view of the aforesaid provisions of Rule 33 of Order XLI of the Code and bearing in mind the ratio propounded in the aforesaid decision in the case of State of Maharashtra (Supra), we have no hesitation in modifying the impugned judgment and award to the aforesaid extent. In other words, the order directing to deduct an amount of 5%, in view of the aforesaid Circular, is hereby quashed, in view of the aforesaid decision of the Apex Court.

11. In the circumstances, the parties are directed to bear their own costs. The appellants have not deposited or paid the amount of compensation awarded to the respondent-claimants. Therefore, the appellants are hereby directed to deposit the said amount within a period of eight weeks.

.....